NOTES OF CASES.

Liability of Stock Brokers to Bank for Theft of Officers—Supreme Court of Louisiana, April 26, 1909—Rehearing Denied June 7, 1909.—When money transferred to an honest taker has been obtained through a felony by the one transferring it, the honest taker, who receives it without knowledge of the felony and in due course of business, acquires good title to it as against the one from whom it was stolen. Bad faith will alone defeat the right of the taker. Mere ground of suspicion, or defect of title, or knowledge of circumstances which would create suspicion in the mind of a prudent man, or gross negligence on the part of the taker, will not defeat her title. Bad faith alone will defeat the right of the taker without knowledge.

The test is honesty and good faith, not diligence. 69 Cent. Law Journal, p. 341, 49 Southern 593.

Although this decision was published in a previous number, yet as it has been the subject of so much comment, we have decided to insert it again together with the criticisms. The prevailing opinion is that it is wrong. In the Cent. Law Journal, which contains a learned and exhaustive note, it is said:

"The principal case seems far afield in holding that the money paid defendants by the paying teller was received 'in due course of business.' Money is only received in due course of business when it is received from one having the apparent right to dispose of it in the manner it is usually disposed of. The teller had the right to dispose of the bank's money in the bank's business, or presumptively in the bank's business. It was distinctly stated by the teller in the principal case that this payment was not the bank's business and this consideration is absolutely unnoticed in the court's opinion, although it is distinctly conceded that money paid over the bank's counter is supposed to be the bank's money."

"It certainly seems to be a 'circumstance of grave suspicion' for a minor officer of a bank to deliver to another the funds of a bank, in such an irregular manner and outside of all apparent scope of his duties."

The *Columbia Law Review,* in an annotation to this case said: "The only authority relied upon in the principal case, Merchants' Loan & Trust Co. *v.* Lampson, 90 Ill. App. 18, seems distinguishable on its facts, since in that case it did not appear that any part of the transaction took place within the bank."

Prohibition as Defense to Action for Rent of Liquor Store.—In the December number we published an English decision under Notes of Cases, p. 647, holding that an action for rent was not defeated

because the premises, which were leased for the purpose of selling liquor thereon, could no longer be used lawfully for that purpose. We now find a decision from Alabama which seems to squint the other way. In that case, property was leased for occupation as a saloon and not otherwise. A prohibition law was subsequently passed. In a suit for rent, the tenant defended on the ground that there was a total destruction of the premises. Held, the theory of the defense was correct, but the law did not work a total destruction, as non-intoxicating liquors could be sold. O'Bryne *v.* Henley (Ala. 1909) 50 So. 83.

This case is reconciled with the ruling in the English case in the following note which we take from the Columbia Law Review, vol. 9, p. 735: "It is generally stated that, since rent is a certain profit issuing out of land in compensation for its use and occupation, Chamberlain *v.* Godfrey's Admin. (1873) 50 Ala. 530, a destruction by fire, inevitable accident, or the public enemy, does not relieve the tenant from an express covenant to pay rent. 3 Kent Com. 466; Cook & Co. *v.* Anderson (1887) 85 Ala. 99. There is a limitation on this principle, however, where the entire subject matter of the lease is totally destroyed, since in this case there is nothing from which rent can issue, and therefore the lease may be terminated. Graves *v.* Berdan (N. Y. 1859) 29 Barb. 100; McMillan *v.* Solomon (1868) 42 Ala. 356 (leased rooms). The cases laying down this rule and its limitation, however, are all cases of destruction by accidental fire. In South Carolina, on the other hand, it is maintained that rent springs from a beneficial use of the premises, that a deprivation of such use, although without physical destruction, is sufficient to constitute failure of consideration, and that a tenant should be allowed to rescind. Coogan *v.* Parker (1870) 2 S. C. 255. This principle, however, is declared to apply only in cases of destruction by act of God or the public enemy, and not by accidental fire, as in the latter event, owing to the difficulties of proof, a tenant, by his own act, might terminate the relation. Coogan *v.* Parker supra. This interpretation, however, is irreconcilable with the result reached when there is a total physical destruction of the premises, Graves *v.* Berdan supra, and the general doctrine does not appear substantiated by the cases. The principal case is of interest in showing an adoption of the South Carolina rule in place of the general rule, which previously obtained in Alabama."

Savage Domestic Animal—Scienter—Liability of Owner of Dangerous Animal—Trespasser.—In Lowery *v.* Walker (1909) 2 K. B. 433, the defendant, a farmer, was owner of a savage horse which had previously bitten human beings to the defendant's knowledge, and he kept the horse in one of his fields through which there was a footpath along which, as the defendant knew, numbers of the public had for thirty-five years habitually trespassed in order